IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4786 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CITIZENS CO-OP BANK LTD

Versus

HARSHADKUMAR M MASHRU

Appearance:

1. Special Civil Application No. 4786 of 1992

MR YOGESH S LAKHANI for Petitioner No. 1

MR DEEPAK M SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2-5

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 18/09/2002

ORAL JUDGEMENT

1. The short facts of the case are that the

petitioner, which is a cooperative bank preferred Lavad Case No.292/1987 before the Registrar's Board of Nominees, Rajkot and for the recovery of Rs.1,68,501.01 with interest at the rate of 17.5% from the date of the suit with penal interest at the rate of 2%. In the said suit the petitioner submitted an application for attachment before judgement and it appears that the learned Nominee, on 27-5-1987 below the application for attachment before judgement Ex.4, passed the order, whereby the attachment before judgement was granted and the said order was conditional in as much as if the defendant furnishes surety of the suit amount as it may be acceptable by the petitioner-plaintiff the attachment may not be effected. Respondent No.1 stood as surety pursuant to the order attachment before judgement.

2. Thereafter the petitioner bank submitted an application for impleading respondent No.1 as party defendant in the suit proceedings on the ground that since respondent No.1 has stood as a surety to the order of attachment before judgement, the outcome of the suit would affect the rights and, therefore, he is necessary party. The learned Nominee passed the order on 18-10-1988, whereby the application was allowed and respondent No.1 was allowed to be impleaded as respondent No.5 in the suit. The revision was preferred against the aforesaid order of the learned Nominee being Revision No.79/1990. The said revision was heard by the Gujarat Cooperative Tribunal and ultimately as per the judgement and order dated 28-1-1990, the Tribunal found that since the petitioner has stood as surety to the order of attachment before judgement, respondent No.1 cannot be impleaded as party to the suit proceedings since even on the date when the suit was filed, respondent No.1 was not the member of the bank. The said order of the learned Tribunal is under challenge in this petition.

3. Mr.Mankhad, learned Counsel appearing for Mr.Lakhani, contended that since respondent No.1 stood as surety to the order of attachment before judgement if ultimately award is passed, respondent No.1 would be affected by the outcome of the suit proceedings and, therefore, on the said ground, the application was submitted and the learned Nominee had rightly allowed the same. Mr.Mankad submitted that the Tribunal has not considered the said aspect and has wrongly allowed the revision.

4. On behalf of the respondents, Mr.Deepak Shah, learned Counsel has supported the order passed by the Tribunal and has submitted that since respondent No.1

stood as surety to the order of attachment before judgement, he cannot be said to be necessary party to the suit proceedings.

5. Considering the above, it is clear that the petitioner had not entered into any transaction of loan, nor respondent No.1 had stood as guarantor at the time when the loan was granted. Respondent No.1 was also not the member of the bank and it is only on account of standing as surety pursuant to the order of attachment before judgement he came into the picture. The surety of attachment before judgement are with purpose that in the event of passing of any decree and if the defendant is unable to pay the debts, because he has transferred properties pending the suit, the amount can be realised from the surety. The parties who stands as surety to attachment before judgement are not to create any new contract or any guarantee or rather are not entering into any transaction of liability save and except the statutory liability as indicated earlier. Since respondent No.1 only stood as the surety pursuant to the order of attachment before judgement, if it is found that the properties are transferred by the principal debtors with a view to defeat the award, he can be fastened with laibility by the Court concerned, but thereby it does not mean that he enters into any new transactions with the bank or it cannot be said that he would rather be one of the judgement debtors or debors to any debt or loan of the bank on the basis of which the suit is filed. The status of the surety to the order of attachment before judgement is well clarified and the life of the surety is only to that extent. In that view of the matter, it appears that the tribunal was perfectly justified in not allowing the application of the bank to implead respondent No.1 as party defendant in the suit proceedings.

In view of the above discussion, the petition fails and hence rejected. Rule is discharged. There shall be no order as to costs.

18-9-2002 (Jayant Patel, J.)

vinod